

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

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74-1034

74-1034

To be submitted

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P/S

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X

ARTHUR NEEDLES, :

Appellant, :

Docket No. 74-1034

-against- :

UNITED STATES OF AMERICA, :

Appellee. :

-----X

BRIEF FOR THE APPELLEE



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ARTHUR NEEDLES, :
Appellant, :
-against- :
UNITED STATES OF AMERICA, :
Appellee. :
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PRELIMINARY STATEMENT

Appellant Arthur Needles appeals from an order of the Honorable Jack B. Weinstein, United States District Judge, dismissing his motion brought pursuant to 28 U.S.C., §2255 for vacation of a judgment of conviction entered April 10, 1972.

On December 29, 1971, Arthur Needles pled guilty to count six of a thirty count indictment, which count charged him with the unregistered possession of an H & R Reising sub-machine gun, in violation of 26 U.S.C., Section 5861(d). On April 10, 1972, he was sentenced to three years' imprisonment by the Honorable Joseph C. Zavatt, United States District Judge.

Needles appealed from Judge Zavatt's denial of his motion to withdraw the plea, and this Court affirmed in United States v. Needles, 472 F. 2d 652 (2d Cir., 1973).

Needles then, in June of 1973, filed a petition for a writ of habeas corpus in the Middle District of Pennsylvania. Judge Sheridan of that court dismissed the petition, stating that "the petition is more properly addressed to the United States District Court for the Eastern District of New York pursuant to

28 U.S.C.A. Section 2255" (APP. index #2).

The petition was then sent to the Eastern District of New York, and assigned to Judge Weinstein, who, in a memorandum and order, dismissed the petition for failure to state a claim for relief. (APP. index p. 7)

Needles then wrote a letter to Judge Weinstein dated November 14, 1973, which the Court treated as a Notice of Appeal. Needles has completed serving his sentence at Lewisburg and is now residing in Florida.

ISSUE PRESENTED

WAS JUDGE WEINSTEIN'S DISMISSAL
OF THE TRANSFERRED PETITION
ERRONEOUS.

ARGUMENT

A review of appellant's original habeas corpus petition which is apparently serving as his appellate brief, reveals that Judge Weinstein's decision was well founded.

Appellant raises, for the first time, a speedy trial issue and cites Strunk v. United States, 412 U.S. 434 (1973). Appellant's reliance on Strunk is obviously misplaced, as that case merely dealt with the remedy to be afforded a defendant who has been concededly denied a speedy trial. In that case, the Circuit Court of Appeals had found, and the Government did not question the finding, that Strunk had been denied his Sixth Amendment right. No such record exists here. No speedy trial issues were raised either in the District Court or in the Court of Appeals for the Second Circuit.

Citations are unnecessary for the proposition that a voluntary plea of guilty, entered with the assistance of adequate counsel, constitutes a waiver of nonjurisdictional defects. Understandably, appellant does not rely on an alleged violation of the Speedy Trial Rules adopted pursuant to Rule 50(b) of the Federal Rules of Criminal Procedure. Rule 7 of the Plan provides that a guilty plea operates as a waiver of any such claim.

Appellant Needles has had his day in court, and the conviction has been affirmed.

CONCLUSION

The Order of Judge Weinstein should be affirmed.

Respectfully submitted,

Dated: Brooklyn, New York
March 19, 1974

EDWARD JOHN BOYD V
United States Attorney
Eastern District of New York

RAYMOND J. DEARIE,
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Of Counsel.

AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK, ss:

CAROLYN N. JOHNSON, being duly sworn, says that on the 19th
day of March, 1974, I deposited in Mail Chute Drop for mailing in the
U.S. Courthouse, Cadman Plaza East, Borough of Brooklyn, County of Kings, City and
State of New York, X two copies of the BRIEF FOR THE APPELLEE
of which the annexed is a true copy, contained in a securely enclosed postpaid wrapper
directed to the person hereinafter named, at the place and address stated below:

Arthur Needles, Pro Se
1920 South Ocean Drive, Apt. 607
Fort Lauderdale, Fla. 33316

Sworn to before me this
19th day of March, 1974

Olga S. Morgan
OLGA S. MORGAN
Notary Public, State of New York
No. 24-4501966
Qualified in Kings County
Commission Expires March 30, 1975

Carolyn N. Johnson
CAROLYN N. JOHNSON